



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Enter into a Second Amendment to World of Wonders Science Museum Lease

MEETING DATE: February 4, 2009

PREPARED BY: City Manager

RECOMMENDED ACTION: Adopt Resolution authorizing the City Manager to enter into a Second Amendment to the World of Wonders (WOW) Science Museum lease.

BACKGROUND INFORMATION: The Board of Directors of the WOW Science Museum has requested that the Council consider amending the current lease agreement.

Specifically, it is requested that the Council:

- A) Extend the commencement of rent obligations by one year – (The current agreement calls for rent in the amount of \$1,030.00 per month to begin in February 2009);
- B) Freeze the indexing of rent increases for one year – (The rent is to increase annually by the Consumer Price Index or 2.5% whatever is larger);
- C) Extend the commencement of regular hours of operation to August 1, 2009 – (The current agreement envisioned the museum would be opened by February 2009 for a minimum of 33 hours per week, at least 12 hours of the weekend including no less than six hours on Sunday); and
- D) Extend the completion of the south tenant improvements until one year after the construction defects of the building are corrected – (The current agreement did not account for construction defects but did require all tenant improvements be completed by January 31, 2009).

The WOW Museum entered into an agreement with the City Council on August 2, 2006 to develop the "shell" space attached to the downtown parking garage as an interactive science museum focused on children. Prior to this agreement, the City had unsuccessfully marketed the space for retail use. The lack of a floor, electrical system, heating, air conditioning, and other tenant improvements made the space cost prohibitive.

APPROVED:


Blair King, City Manager

The WOW has engaged in a very successful campaign to raise funds and has invested \$550,000 in improvements, plus in-kind contributions. They have a collection of exhibits via the Exploratorium and, subject to raising operating capital, are ready to open.

WOW had a "soft opening" for two weeks at the end of December. It was very well received. A Grand Opening is planned for March and museum will be open school breaks and holidays. The museum is open for special events and holidays. However, the museum is requesting more time to raise operating capital. The economy has been a problem for fund raising.

During the course of construction, the southern side of the space was discovered to have mold and construction defects. The City and WOW were previously unaware of the situation. The City and WOW are working towards a resolution. Until it is corrected, the WOW is not responsible for tenant improvements, but the museum still has a desire for the space.

FISCAL IMPACT: All rent proceeds benefit the Transit Fund pursuant to the City's funding agreement with the Federal Transit Administration. The Transit Fund would forgo approximately \$12,360 in annual rent. On the other hand, the City has received over \$550,000 in improvements to its asset. It appears as though the WOW will be a downtown attraction that will add to the economic vitality of Sacramento Street and help to draw visitors to downtown Lodi. In addition, it is expected the WOW retail store will produce future sales tax revenue.



Blair Kine
City Manager

Attachment: Amended Lease Agreement

K-3

SECOND AMENDMENT TO LEASE AGREEMENT

WORLD OF WONDERS SCIENCE MUSEUM

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THIS SECOND AMENDMENT TO LEASE AGREEMENT, entered into this ____ day of _____, 2009, by and between the CITY OF LODI, a municipal corporation ("City"), and the World of Wonders Science Museum, a California Nonprofit Corporation (Tax ID No. 20-3075595) ("The WOW or "Lessee") shall be as follows:

WHEREAS, the parties entered into a Lease Agreement dated February 1, 2007 to allow the construction of Tenant Improvements for and the operation of a Science Museum and Museum Store by The WOW in the Lodi Parking Structure space owned by the City and Council approved a FIRST AMENDMENT dated on December 19, 2007; and

WHEREAS, the Lease Agreement as amended requires that the Tenant Improvements be completed by January 31, 2009 and that the payment of rent commence by February 1, 2009;

WHEREAS, The WOW has completed construction of the north half of the Tenant Improvements but construction of the Tenant Improvements for the south half has been delayed by roof leaks which must be repaired prior to the commencement of tenant improvements: and

WHEREAS, in recognition of WOW's efforts and expected successful fundraising campaign, the Parties wish to extend WOW's deadline for completion of the tenant improvements, regular hours of operation and the rent commencement date.

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

1. Effect of Amendment.

Except as expressly modified herein all terms of the Lease Agreement shall remain in full force and effect.

2. Rent: Paragraph six of the Lease Agreement shall be amended to read:

No rent shall be required to be paid until February 1, 2010. Starting February 1, 2010 the WOW shall pay rent in the amount of \$1,030.00 monthly (which is the equivalent of \$1.29 per square foot rent per month for the estimated 800 square foot Museum Store.) to City.

The WOW's monthly rental payment shall increase in each year of this Lease based upon the annual percentage change of The Consumers Price Index for All Urban Consumers (All Items), San Francisco-Oakland-San Jose Average, as published by The United States Department of Labor Statistics, for the month prior to the date the payment is due. Notwithstanding the foregoing, for any given year, The WOW's monthly rental payment shall increase by no less than 2.5%, and no more than 5.0%, per year.

3. Hours of Operation. Paragraph 3 shall be amended to read:

The Science Museum and the Museum Store shall be open to the public a minimum of thirty three (33) hours per week, at least 12 hours of which shall fall on a weekend, and of those hours, no less than six (6) hours shall be on Sunday. As used in this paragraph, "Open to The Public" means open to any person seeking admission to the Science Museum or the Museum Store off the street. However, this paragraph shall not prevent The WOW from charging a fee for admission to the Science Museum. Failure of The WOW to be open as set forth above starting August 1, 2009 shall be deemed a material breach of the Lease.

4. Term. Paragraph 5 of the lease shall be amended to read:

The term of this Lease shall be for a period of seven (7) years commencing February 1, 2007 and ending January 31, 2014, pursuant to the provisions of Government Code Section 37380.

5. Tenant Improvements. Subparagraph (c) of Paragraph 7 shall be amended to read as follows:

c. Construction Timeline. The WOW has completed the Tenant Improvements for the north half of the Premises. However, the southern portion of the premises has unanticipated roof leaks and evidence of mold that must be resolved prior to completion of the tenant improvements. The Tenant Improvements for the south half of the Premises will be completed within twelve (12) months of the roof repairs and other structural issues. Failure of The WOW to complete construction of Tenant Improvements as set forth above shall be deemed a material breach of the Lease.

6. FTA Approval: This lease amendment is subject to approval by the Federal Transit Administration.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first hereinabove mentioned.

CITY OF LODI,
a municipal corporation

WORLD OF WONDERS SCIENCE MUSEUM,
a California Nonprofit Corporation

BLAIR KING, City Manager

By _____
SALLY SNYDE, President

ATTEST:

RANDI JOHL, J.D., City Clerk

APPROVED AS TO FORM:

D. STEPHEN SCHWABAUER
City Attorney

RESOLUTION NO. 2009-16

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO ENTER INTO
SECOND AMENDMENT TO WORLD OF WONDERS
SCIENCE MUSEUM LEASE

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WHEREAS, the World of Wonders (WOW) Museum entered into an agreement with the City Council on August 2, 2006, to develop the "shell" space located attached to the downtown parking garage as an interactive science museum focused on children; and

WHEREAS, the WOW has engaged in a very successful campaign to raise funds and has invested \$550,000 in improvements, plus in-kind contributions. They have a collection of exhibits via the Exploratorium and, subject to raising operating capital, are ready to open; and

WHEREAS, the museum is requesting more time to raise operating capital due to the existing economy, which has effected fund raising efforts; and

WHEREAS, during the course of construction, the southern side of the space was discovered to have mold and construction defects, of which the City and WOW were not aware and are now working towards a resolution; and

WHEREAS, until the defects are remedied, WOW is not responsible for tenant improvements; and

WHEREAS, the Board of Directors of the WOW Science Museum has requested that the City Council consider amending the current lease agreement as outlined below:

- A) Extend the commencement of rent obligations by one year – \$1,030.00 per month to begin in February 2010;
- B) Freeze the indexing of rent increases for one year – (The rent is to increase annually by the Consumer Price Index or 2.5% whatever is larger);
- C) Extend the commencement of regular hours of operation to August 1, 2009; and
- D) Extend the completion of the south tenant improvements until one year after the construction defects of the building are corrected.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to enter into a Second Amendment to the WOW Museum Lease as outlined above; and

BE IT FURTHER RESOLVED that this lease amendment is subject to approval by the Federal Transit Administration.

Dated: February 4, 2009

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I hereby certify that Resolution No. 2009-16 **was** passed and adopted by the City Council of the City of Lodi in a regular meeting held February 4, 2009, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Johnson, Katzakian, Mounce,
and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk